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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

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)
Amendment of Section 25.131
)
of the Commission's Rules
)
and Regulations to Eliminate the
)
Licensing Requirement for Certain
)
International Receive-Only
)
Earth Stations)

CC Docket No. 93-23
RM-7931

REPLY COMMENTS OF COMSAT CORPORATION

COMSAT Corporation ("COMSAT"), by its attorneys, hereby replies to comments filed in response to the above-captioned Notice of Proposed Rulemaking ("NPRM").¹ The record developed in this proceeding convincingly demonstrates that the repeal of the licensing requirement in Section 25.131(j) of the Commission's rules for international receive-only earth stations would be in the public interest.² See 47 C.F.R. § 25.131(j). Only two parties, PanAmSat L.P. ("PanAmSat") and GTE Spacenet Corporation ("GTE Spacenet"), while supportive of the deregulation of receive-only earth stations in principle, have proposed more

¹ *Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, 8 F.C.C. Rcd 1720 (1993).

² Supporting the proposed rule change in its entirety were United States Information Agency, Bureau of Broadcasting; IDB Communications Group, Inc. ("IDB"); New England Satellite Systems, Inc.; Prodelin Corporation; Transworld International, Inc.; DirectTV, Inc.; The Satellite Broadcasting and Communications Association; Hoosier Satellite, Inc., and Comsearch. Comsearch, an independent advisor on frequency coordination matters, "supports the Commission's effort to streamline the licensing process," but argues that modification to (voluntarily) registered receive-only satellites should be reported through the coordination and public notice processes to preserve the databases used for frequency coordination. Comments of Comsearch, CC Docket No. 93-23 (filed May 12, 1993) at 2-4. Consistent with its position favoring voluntary registration, COMSAT agrees with Comsearch that any registered antenna user that seeks interference protection following a modification that could increase the facility's susceptibility to interference should be required to undergo the frequency coordination process again. As with the initial registration, this supplemental frequency coordination should be voluntary.

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limited rule changes. As COMSAT demonstrates below, neither of these proposed limitations has merit. Moreover, as for IDB's suggestion that the FCC should clarify the definition of "operationally connected," the Commission already has provided a clear and workable interpretation of that statutory language.³

1. PanAmSat supports a repeal of the licensing requirement, but *only* for receive-only earth stations that do *not* communicate with INTELSAT satellites.⁴ This proposal, of course, ignores the very essence of the Commission's tentative conclusion favoring the deregulation of all international receive-only earth stations, whether accessing the INTELSAT system or not. One searches PanAmSat's comments in vain for an explanation for why a receive-only earth station aimed at an INTELSAT satellite should be treated differently as a regulatory matter than one aimed at a separate system satellite. All that PanAmSat offers is the conclusory statement that communicating with INTELSAT satellites should remain subject to Section 25.131(j)(1). COMSAT submits that there is no logical basis in law or fact for treating these similarly-situated facilities differently.⁵

2. Moreover, rather than comment on the Commission's analysis favoring deregulation, PanAmSat launches into its well-worn response to virtually every COMSAT filing --

³ IDB also requests that the Commission's proposal to deregulate fixed receive-only international earth stations be extended to mobile receive-only stations as well. While COMSAT does not oppose IDB's proposal, due to the unique issues that exist in a mobile environment, it would be more appropriate to address such issues in a separate rulemaking proceeding and allow consumers to obtain the benefits of the Commission's proposal for fixed receive-only stations as soon as possible.

⁴ Comments of PanAmSat L.P., CC Docket No. 93-23 (filed May 12, 1993) at 1.

⁵ See *Melody Music, Inc. v. FCC*, 345 F. 2d 730 (1965) (FCC must provide a rational basis for differences in treatment between otherwise similarly-situated licensees).

i.e., the instant proceeding implicates fundamental issues that necessitate a comprehensive agency examination into the regulation of COMSAT. COMSAT simply cannot understand how a Commission proposal intended to benefit *all users* of international receive-only earth stations is so threatening to PanAmSat. Not surprisingly, PanAmSat does not explain the connection.⁶

3. In short, PanAmSat has failed to justify, for purposes of licensing, a distinction between international receive-only earth stations based upon whether such stations communicate with INTELSAT or non-INTELSAT satellites. Accordingly, PanAmSat's request that INTELSAT stations continue to be subject to the Section 25.131(j)(1) licensing regulation should be rejected.

4. Turning to the issue of the licensing requirement for transborder receive-only earth stations,⁷ only GTE Spacenet voiced opposition to the Commission's proposal to eliminate licensing for such stations.⁸ GTE Spacenet would support the repeal of Section 25.131(j) for these stations only if the FCC ensures that foreign satellites, such as those in the Mexican MORELOS and Canadian ANIK systems, "are not used for services that could or should be provided over U.S. domestic satellites."

⁶ Even the "reasons" for a comprehensive proceeding proffered by PanAmSat are riddled with factual errors and irrelevancies. For example, contrary to PanAmSat's assertion, COMSAT no longer has a request pending before the agency to substitute market forces for the requirement in Section 201(c)(8) of the Communications Satellite Act of 1962 that the FCC determine if its capitalization plan is in the public interest. *See* PanAmSat at 2. In addition, despite PanAmSat's contention, there is no relevance to the regulation of COMSAT arising from the FCC's decision to grant the request of an unrelated company, BrightStar Communications, Ltd., for a declaratory ruling that private carriers may operate earth stations accessing INTELSAT satellites. *See id.*

⁷ *See, e.g.*, Comments of COMSAT at 6 n.16; Comments of IDB, CC Docket No. 93-23 (Filed May 12, 1993) at 5; Comments of DirectTV, CC Docket No. 93-23 (filed May 12, 1993) at 4-6.

⁸ Comments of GTE Spacenet, CC Docket No. 93-23 (filed May 12, 1993) at 2.

5. While COMSAT does not typically avail itself of transborder service on domestic satellites, it submits that retention of the licensing requirement for receive-only earth stations downlinking foreign programming would be unnecessarily burdensome for users of transborder services, would be difficult to administer from a regulatory perspective, and would not otherwise be in the public interest.⁹ Accordingly, the FCC should remove the licensing requirement for all international receive-only earth-stations, including those used to provide transborder services, as suggested in the *NPRM*.¹⁰

6. Finally, COMSAT disagrees with IDB's suggestion that additional clarification of the phrase "operationally connected," as that term is used in Section 103(2) of the Satellite Act, which defines "satellite terminal station," may be required.¹¹ The Commission already has a clear and workable interpretation.¹² In construing the Satellite Act's definition, the Commission has determined that, to be "operationally connected," an earth-station must be used to "provide common carrier services" or "exchange [a] carrier's common carrier traffic with the global satellite system."¹³ In short, only those earth stations that are an "integral part of the domestic

⁹ See Comments of COMSAT at 6 n.16.

¹⁰ COMSAT agrees with those commenters urging the FCC and the U.S. government to work with Canada, Mexico, and other neighboring countries to ensure a free flow of programming to and from this country. See, e.g., Comments of DirectTV at 6.

¹¹ Comments of IDB at 3-4.

¹² 47 U.S.C. § 702(2). See also *Licensing Under Title III of Private Transmit/Receive Earth Stations Operating with the INTELSAT Global Communications Satellite Systems*, 3 F.C.C. Rcd 1585, 1587 (1988) ("Reuters"), *aff'd* *TRT Telecommunications Corp.*, 876 F.2d 134 (D.C. Cir. 1989); *Deregulation of Receive-Only Earth Stations Operating with the INTELSAT Global Communications Satellite System*, Declaratory Ruling, RM No. 4845, FCC 86-214 (May 16, 1986).

¹³ *Reuters*, 3 F.C.C. Rcd at 1587 and n.20.

network of a common carrier" are "satellite terminal stations."¹⁴ COMSAT believes that no further clarification is possible and that to attempt to tie earth station licensing to the specific types of services carried by those stations in the manner IDB proposes would actually engender greater confusion rather than less.

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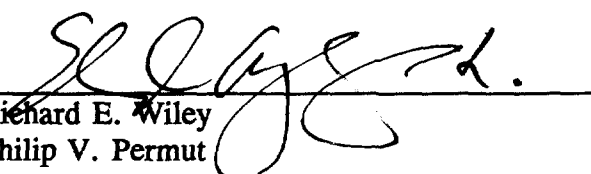
For all the foregoing reasons, and those set forth in its Comments, COMSAT supports the FCC's tentative decision to repeal the licensing requirement for all international receive-only earth stations, except "satellite terminal stations."

Respectfully submitted,

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¹⁴ *Id.* quoting S. Rep. 1584, 87th Cong. 2d Sess. 1-2 (1962).